

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

STATE OF NORTH DAKOTA, <i>et</i>)	
<i>al.</i> ,)	
)	
Plaintiffs,)	
)	Civil No. 3:15-cv-00059-PDW-
v.)	ARS
)	
U.S. ENVIRONMENTAL)	
PROTECTION AGENCY, <i>et al.</i> ,)	
)	
Defendant.		

PLAINTIFF STATES' STATUS REPORT

Plaintiff State of North Dakota, the other Plaintiff States¹, and Plaintiff-Intervenor, the Governor of the State of Iowa, Kimberly K. Reynolds (collectively, the "Plaintiff States"), respectfully submit this Status Report in response to this Court's June 24, 2020 Order staying this action and requiring a status report from Plaintiff States every 90 days. ECF No. 325. Plaintiff States respectfully request that the Court continue the stay of this action pending final resolution of litigation in multiple forums (the "Related Litigation") challenging the U.S. Environmental Protection Agency's and the U.S. Army Corps of Engineers' final rules entitled:

¹Alaska, Arizona, Arkansas, Idaho, Missouri, Montana, Nebraska, Nevada, South Dakota, and Wyoming.

“Definition of Waters of the United States—Recodification of Pre-Existing Rules,” 84 Fed. Reg. 56,626 (October 22, 2019) (“Recodification Rule”); and “Navigable Waters Protection Rule: Definition of ‘Waters of the United States,’” 85 Fed. Reg. 22,250 (April 21, 2020) (“2020 WOTUS Rule”). The Related Litigation seeks, in various forms, to either: (1) vacate the Recodification Rule and the 2020 WOTUS Rule nationwide (and in some cases preliminarily enjoin the 2020 WOTUS Rule) and reinstate the 2015 WOTUS Rule that is the subject of this action; or (2) enjoin all or part of the Recodification Rule or 2020 WOTUS Rule.

STATUS REPORT

Since this Court’s Order granting the stay, the Related Litigation remains active, with no forum yet having reached a dispositive result:

1. Several cases challenging the Recodification Rule remain in abeyance, while dispositive briefing in cases challenging the 2020 WOTUS Rule continues in other forums. *See South Carolina Coastal Conservation League, et al. v. Andrew R. Wheeler, et al.*, 2:19-cv-03006 (D. S.C. (Charleston Division)); *Pierce v. EPA*, 0:19-cv-2193 (D. Minn.); *Washington Cattlemen’s Association v. United States Environmental Protection Agency, et al.*, 19-cv-00569 (W.D. Wash. (Seattle Division)) (only stayed as to claims over the Recodification Rule and 2015 WOTUS Rule, while claims against the 2020 WOTUS Rule are proceeding (*See*

ECF No. 86, Minute Order re parties' stipulated motion to stay certain claims (July 31, 2020))).

2. Many cases are continuing over challenges seeking to vacate or enjoin the 2020 WOTUS Rule (including those seeking to reinstate the 2015 WOTUS Rule at issue in this case), but briefing is not complete, and a merits ruling has not been issued in any forum. *See William Murray And June Omura v. Andrew Wheeler, et al.*, 19-cv-1498 (N.D. N.Y.); *New Mexico Cattle Growers' Association v. United States Environmental Protection Agency, et al.*, 19-cv-00988 (D. N.M.); *Washington Cattlemen's Association v. United States Environmental Protection Agency, et al.*, 19-cv-00569 (W.D. Wash. (Seattle Division)); *Chesapeake Bay Found., Inc. v. Wheeler*, 1:20-cv-1063 consolidated with 1:20-cv-1064 (D. Md. (N. Division)); *Conservation Law Foundation, et al. v. U.S. Environmental Protection Agency, et al.*, 20-cv-010820 (D. Mass.); *South Carolina Coastal Conservation League, et al. v. Andrew R. Wheeler, et al.*, 20-cv-01687 (D. S.C. (Charleston Division)); *States of California, New York, et al. v. Andrew Wheeler, et al.*, 20-cv-03005 (N.D. Cal.); *The State of Colorado v. U.S. Environmental Protection Agency, et al.*, 20-cv-01461 (D. Col.); *Oregon Cattlemen's Association v. United States Environmental Protection Agency, et al.*, 19-cv-00564 (D. Oreg. (Portland 3)); *Puget Soundkeeper v. EPA*, 2:20-cv-950 (W.D. Wash); *Pascua Yaqui Tribe v. EPA*, 4:20-cv-00266 (D. Ariz.). This includes additional challenges filed after

Plaintiff States' June 22, 2020 Motion to Extend Stay. *See Navajo Nation v. Wheeler*, 2:20-cv-00602, ECF No. 1 (D.N.M. June 22, 2020); *Envl. Integrity Project v. EPA*, 1:20-cv-01734, ECF No. 1 (D.D.C. June 25, 2020).

3. The 2020 WOTUS Rule remains enjoined in Colorado, although the order granting the preliminary injunction has been appealed and oral argument on the appeal is set for November 18, 2020. *See Colorado v. EPA*, at ECF No. 62 (Notice of Appeal, June 23, 2020); *State of Colorado v. EPA*, Case No. 20-1238 consolidated with Nos. 20-1262 & 20-1263, at Order No. 10771558, September 18, 2020 (10th Cir.).

4. The preliminary injunction motion in *Oregon Cattlemen's Association* case was denied on August 6, 2020. *See* ECF No. 108 (Minutes of Proceeding and Order (August 7, 2020)).

5. The preliminary injunction motions in the *Washington Cattlemen's Association* and *New Mexico Cattle Growers' Association* cases seeking to enjoin the 2020 WOTUS Rule are still pending.

CONCLUSION

The Related Litigation, which is the basis for the current stay of this action, remains active and has not been resolved. Therefore, Plaintiff States respectfully request that this Court continue to STAY this case pending resolution of the

Related Litigation. Plaintiff States will provide an update to this Court in 90 days from the date of this Report on the status of the Related Litigation.

Dated: September 23, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of September, 2020, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using the CM/ECF electronic filing system, which will send an electronic copy of this filing to all counsel of record.

s/ Paul M. Seby

Paul M. Seby